

The Appeals Board finds, based upon a review of the evidence, that the Order of Administrative Law Judge Nelsonna Potts Barnes should be affirmed. Claimant, an employee of respondent for nearly twenty (20) years, began experiencing problems with her right ankle in 1991. She continued working with respondent, standing eight (8) hours plus per day on concrete floors, with increasing pain over a several year period.

Claimant first sought medical care in 1991, but filed no written claim with respondent at that time.

Claimant continued working for respondent and in 1993 contacted the respondent's first aid department regarding the ongoing difficulties associated with her ankles. On September 18, 1995, an Employer's Report of Incident was prepared regarding claimant's bilateral ankle symptoms.

Respondent contends claimant did not suffer accidental injury arising out of and in the course of her employment. However, the medical records of Dr. Steven J. Howell show claimant's work on concrete floors eight (8) hours plus per day was, and continues to be, an aggravating factor in claimant's ongoing symptomatology. As such, the Appeals Board finds that claimant has proven by a preponderance of the credible evidence that her ankle conditions do arise out of and in the course of her employment with respondent.

Respondent next contends claimant failed to submit timely written claim as required by K.S.A. 44-520a. The pertinent language of K.S.A. 44-520a requires that the employee serve upon the employer a written claim for compensation within two hundred (200) days after the date of the accident, or within two hundred (200) days after the last date of payment of compensation. Respondent argues claimant's date of accident should either be 1991, when she first obtained medical treatment for her ankles, or March 18, 1993, when she approached respondent's first aid department regarding her symptomatology. Respondent's argument fails. Date of accident, when dealing with a series of micro-traumas, has been recently addressed by the Kansas Court of Appeals in Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), and in Condon v. The Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995). In both Berry and Condon the Court of Appeals dealt with micro-trauma injuries which occurred over long periods of time and which the court found, "the origin could not be determined as to a specific date." Condon, *supra*.

Numerous possibilities for determining the date of accident were discussed in Condon and Berry. In Berry the bright line rule establishing the last day claimant worked for respondent as the date of accident was felt to offer simplicity and uniformity in dealing with carpal tunnel syndrome cases. In Condon, while dealing with carpal tunnel, the court was also faced with decisions regarding micro-trauma injuries in claimant's wrist, arm, elbow, shoulder and neck. While not specifically carpal tunnel syndrome these conditions were clearly repetitive micro-trauma injury situations where it is difficult to establish with certainty the onset of the micro-trauma injuries.

In this case, the 1991 and March 18, 1993 dates, while significant, do not, according to the medical evidence, in any way interrupt or alter the apparent progression of claimant's ongoing symptomatology. More significant dates to be considered would be the August 11, 1995 examination by Dr. Murphy, resulting in permanent work restrictions to claimant or, as found by the Administrative Law Judge, the September 18, 1995 date wherein claimant caused an Employer's Report of Incident to be prepared showing claimant's ongoing symptomatology. Utilizing either date, the requirements of K.S.A. 44-520a are met as both dates are within two hundred (200) days of claimant's submission of her written claim on September 18, 1995.

Following the logic of the Appeals Court in both Berry and Condon the Appeals Board finds claimant has submitted written claim in a timely fashion as required by K.S.A. 44-520a and the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 12, 1995, should be, and is hereby, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated December 12, 1995, should be, and is hereby, affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kelly W. Johnston, Wichita, Kansas
David S. Wooding, Wichita, Kansas
Marvin Appling, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director